

FOR THE DISTRICT OF NEW MEXICO

ERIC GUTIERREZ,

Petitioner,

vs.

CV 19-00436 RB/JHR

HECTOR BALDERAS, Attorney
General for the State of New Mexico,

Respondent.¹

**ORDER ADOPTING MAGISTRATE JUDGE’S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Proposed Findings and Recommended Disposition (PFRD) of Magistrate Judge Jerry H. Ritter (Doc. 31), entered at the undersigned’s request pursuant to 28 U.S.C. § 636(b). (*See* Doc. 9.) After analyzing the double jeopardy and the right to effective assistance of counsel claims, Judge Ritter recommends that the Court dismiss Petitioner Eric Gutierrez’s amended habeas corpus petition under 28 U.S.C. § 2254 with prejudice. (*See* Doc. 31.) The PFRD notified the parties of their ability to file objections and that failure to do so waives appellate review. (*Id.* at 9.) After several extensions, no objections have been filed and the time to do so has passed. (*Id.*; *see also* Docs. 32; 34; 36–37.)

The failure to make timely objections to the PFRD waives appellate review of both factual and legal questions. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1059 (10th Cir. 1996).


THEREFORE,

IT IS ORDERED that the Court:

¹ The Court granted Respondents’ unopposed motion to dismiss warden David Fajardo as a respondent. (Doc. 27.)

- 1) **ADOPTS** the PFRD (Doc. 31);
- 2) **DISMISSES with prejudice** Gutierrez's amended § 2254 petition (Doc. 19); and
- 3) **DENIES** issuing a certificate of appealability because reasonable jurists would not reach a different result.

IT IS SO ORDERED.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE